

September 14, 2022

1

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In Re FLINT WATER CASES Case No. 16-10444

/

STATUS CONFERENCE

BEFORE THE HONORABLE JUDITH E. LEVY
UNITED STATES DISTRICT JUDGE

SEPTEMBER 14, 2022

APPEARANCES IN ALPHABETICAL ORDER:

Margaret A. Bettenhausen
Michigan Department of Attorney General
525 West Ottawa Street, P.O. Box 30755
Lansing, Michigan 48909

Frederick A. Berg
Butzel Long
150 West Jefferson, Suite 100
Detroit, Michigan 48226

James M. Campbell
Campbell Conroy & O'Neil, P.C.
20 City Square, Suite 300
Boston, Massachusetts 02129

(Appearances continued on next page)

**To obtain a
certified
transcript:**

Jeseca C. Eddington, RDR, RMR, CRR, FCRR
Federal Official Court Reporter
United States District Court
200 East Liberty Street
Ann Arbor, Michigan 48104

September 14, 2022

2

1 Marcus Christian
2 Mayer Brown LLP
3 1999 K Street NW
4 Washington, District of Columbia 20006

5 Alaina N. Devine
6 Campbell Conroy & O'Neil, P.C.
7 1 Constitution Wharf, Suite 310
8 Boston, Massachusetts 02129

9 Kristin Michele Dupre
10 Campbell Conroy & O'Neil, P.C.
11 1 Constitution Wharf, Suite 310
12 Boston, Massachusetts 02129

13 Philip A. Erickson
14 Plunkett & Cooney
15 325 East Grand River Avenue, Suite 250
16 East Lansing, Michigan 48823

17 David C. Kent
18 Faegre Drinker Biddle Reath LLP
19 1717 Main Street, Suite 5400
20 Dallas, Texas 75201

21 William Young Kim
22 City of Flint
23 1101 South Saginaw Street, Third Floor
24 Flint, Michigan 48502

25 Patrick J. Lanciotti
360 Lexington Avenue, 11th Floor
New York, NY 10017

Theodore J. Leopold
Cohen Milstein Sellers & Toll PLLC
11780 U.S. Highway One, Suite N500
Palm Beach Gardens, Florida 33408

Emmy L. Levens
Cohen Milstein Sellers & Toll PLLC
1100 New York Avenue, NW, Suite 500
Washington, DC 20005

Wayne Brian Mason
Faegre Drinker Biddle & Reath LLP
1717 Main Street, Suite 5400
Dallas, Texas 75201

September 14, 2022

3

1 Paul F. Novak
2 Weitz & Luxenberg, P.C.
3 Fisher Building
4 3011 West Grand Boulevard
5 Suite 24th Floor
6 Detroit, Michigan 48202

7 Michael L. Pitt
8 Pitt, McGehee,
9 117 West Fourth Street, Suite 200
10 Royal Oak, Michigan 48067

11 Eric Rey
12 US Department of Justice, Civil Division
13 175 N Street, NE
14 Washington, District of Columbia 20002

15 Susan Elizabeth Smith
16 Beveridge & Diamond, P.C.
17 1350 I Street NW
18 Washington, District of Columbia 20036

19 Corey M. Stern
20 Levy Konigsberg, LLP
21 605 Third Avenue, Suite 33rd Floor
22 New York, NY 10158

23 Mark R. Ter Molen
24 Mayer Brown LLP
25 71 South Wacker Drive
Chicago, Illinois 60606

Michael L. Williams
US Department of Justice, Civil Division
175 N Street, NE
Washington, District of Columbia 20002

Also Present:

Deborah E. Greenspan, Special Master
Blank Rome LLP
1825 Eye Street, N.W.
Washington, District of Columbia 20006

September 14, 2022

4

1	<u>I N D E X</u>	
2	<u>WITNESSES</u>	<u>PAGE</u>
3	(None)	
4		
5	<u>EXHIBITS</u>	
6	(None)	
7		
8		
9	<u>MISCELLANY</u>	
10	Proceedings.....	5
11	Certificate.....	39
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

September 14, 2022

5

P R O C E E D I N G S

THE CLERK: Calling the Flint Water Cases.

THE COURT: Okay. Thank you, Leslie. Well, welcome to everyone who's on as a panelist and to those who are attending and observing as well.

And we have at least a reasonably full agenda of issues to get through so that we can continue pressing forward with all of the litigation that is currently pending, which includes now we have several cases heading one back to trial and two or three others to trial. So we have a lot of work to do together. And I'm looking forward to doing it as productively as we can.

So my first question has already been answered. What happened to one VNA's lead counsel who went missing in the last week? And we found out that he got a new job and just didn't let us know about that. But soon we'll be getting a motion to withdraw as counsel. So I'm happy that he's doing all right. And apparently found something satisfying to do other than this case. As hard as that is to imagine.

So the first item on the agenda for today is to get a report from our Special Master Deborah Greenspan. And what I've asked Ms. Greenspan to report on primarily today is the status of the claims process and proceedings with the partial settlement. Because we are getting telephone calls and all sorts of communications here at the court asking for more

September 14, 2022

6

1 information on it. And so I think it would be important for
2 all of us to hear from Deborah about where things stand.

3 So I will turn it over to you.

4 MS. GREENSPAN: Thank you, Your Honor.

5 I'm going to start with just a bit of a recap. I
6 submitted a report on the status of the settlement process on
7 August 5. And in that report I noted that we had received or
8 the claims administrator had received about 43,000 individual
9 claim packages.

10 There's some -- there's going to be some duplications
11 within those claims submissions. But that's the basic number
12 that we're working with right now. And that the claims
13 administrator had reported that approximately 72 percent of
14 these claims seem to be asserting a personal injury claim.
15 The remainder asserted a property damage or business related
16 claim. And that about 40 percent of the claimants are either
17 currently minors or were minors at the time of the water
18 crisis.

19 And again, that's preliminary information. Because
20 until you review the entire claims package, you can't verify
21 the information. And so there will probably be some
22 adjustments in those numbers as we go through the process. So
23 today I'm going to give you a further update on where things
24 are.

25 One of the most important things to relay to everyone

1 is the sheer volume of information that has been submitted to
2 the claims administrator. The claims administrator reports
3 that they received nearly 2 million pages of supporting
4 documents in the last few days of the claims period. And
5 that's about two thirds of the total documents received. In
6 total the claims administrator has about 2.7 million pages of
7 documents.

8 So what happens when you have this many documents to
9 deal with, particularly when they come in in a short period of
10 time, there's a procedure for taking these documents and
11 putting them into a format so that they can be used by claims
12 reviewers to evaluate claims to determine the person's
13 eligibility to determine whether -- and where they fit in the
14 compensation categories.

15 So there's several steps for that process. I don't
16 want to get into a lot of technical details and I don't think
17 that I'm the person to do that anyway. But the first step is
18 really to just look at the submissions, correct corrupt data
19 and other things that the claims administrator sees in the
20 submissions so that they can then be managed and handled in
21 the process.

22 And then once that is done, there is a procedure for
23 converting data to an electronic format so that it is in the
24 claims administrator's system for reviewers to analyze.
25 There's several steps in that process that includes

September 14, 2022

8

1 normalizing the documents so that they're in the same format,
2 scanning them, QC -- doing quality control work on all that.

3 Categorizing the documents by type so that when a
4 claims reviewer picks up claim, the document is identified in
5 the system. It's a birth certificate or it's a medical record
6 or whatever it is so that they don't start clicking through a
7 series of documents that are irrelevant to the point that
8 they're reviewing at that point in time.

9 There's then a data entry process and another quality
10 control component. And then finally it's all uploaded into
11 what's called the claims hub.

12 This is a lot of technical information but it's
13 important to understand the amount of work that is required in
14 order to take all of this information and put it into a
15 useable format.

16 From an individual's perspective, submitted a claim
17 form and a couple of documents. It doesn't seem that hard.
18 It's just the volume that turns this into a significant
19 process.

20 We have been told by the claims administrator that
21 they process about 40,000 pages a day in this process to get
22 it into the claims system. They have 49 people working on the
23 data process and 10 people working on imaging documents.

24 So there's a significant staff of almost 60 people
25 doing this work. They think -- they're still working on it.

September 14, 2022

9

1 And the reason I'm telling you all this and telling everybody
2 all of this is that it's still in process. But they
3 anticipate completing all of these procedures by the end of
4 this month unless there's some unforeseen issue that arises.
5 But that is their current projected timeline.

6 Once that intake process is complete, then they can
7 actually review all the claims. And the reason you cannot
8 review them before this is because you would pick up a claim
9 and you would review it and you would say this document is
10 missing. We can't approve this claim because there's a
11 missing document. But if it's in the queue of all of these
12 documents that are waiting to be put into the system, that
13 will have been a waste of time to review the claim before the
14 documents are in.

15 So that review process is -- there's certainly been
16 some reviews that have occurred. But in terms of the bulk of
17 claims that came in towards the end of the claims period, that
18 review process will start when these documents are all in the
19 system.

20 The next step -- and again, just to educate people,
21 there is a review team. There's a couple of different
22 categories of reviewers. They have different levels of
23 expertise and different assignments. I'm not going to go into
24 the great details of all that. But the adjudication review
25 team consists of 64 people.

1 So there are 64 people who are out there reviewing
2 claims. The claims are divided up into -- these review staff
3 are divided into different categories. There's some that
4 focus on medical records. There's some that focus on
5 different aspects of the claim. There are certain ones that
6 focus on a very important part of the process, which is
7 determining whether a minor or a legally incapacitated
8 individual has a qualified next friend or guardian that will
9 enable them to proceed with their claim.

10 This is the part of the process where reviewers will
11 determine whether there's anything missing or whether there's
12 any deficiency in the claims. The claims administrator will
13 review the claims, put the claim in the highest category for
14 which it qualifies. And then categorize each claim so that
15 everybody will be informed about which category the claims
16 administrator has determined they qualified for.

17 The next step in our process is to send notice
18 letters to claimants. So these are letters that the claimants
19 will receive or their lawyers will receive that will explain
20 whether the claim is approved or whether there's a deficiency
21 in the claim and what the deficiency is.

22 In some cases -- and we expect this will happen
23 probably fairly frequently -- a claim might be approved for a
24 category that is not the one that the claimant requested. So
25 the notice letter will explain what happened and why that is

1 the manner in which the claim has been categorized.

2 So claimants will receive letters. They will receive
3 information about whether their claim is accepted or whether
4 their claim needs some additional material or information in
5 order to qualify.

6 There are -- if a claimant receives a notice and
7 disagrees with it, there is a reconsideration process. And
8 after that, there is an appeal process. It's an
9 administrative appeal process. So no one needs to be
10 concerned that if they get a letter that says your claim is
11 deficient that they don't have any further ability to do
12 anything. They do have two additional options for proceeding
13 with their claim.

14 We -- in terms of timing, I can't give you an exact
15 timing timeframe when these letters will start to be sent. It
16 will not be in September but it should be soon. They will be
17 sent on a rolling basis. That means the claims administrator
18 will not send all the letters at the same time on the same
19 day. There will be a process for sending letters out in
20 batches.

21 So again, people should not be concerned if their
22 neighbor got a letter and they didn't. There's will be coming
23 shortly.

24 So it's -- there's a lot of work going on and I know
25 it's not particularly visible to claimants right now. And I

1 know, Your Honor, that you've mentioned that people have
2 called and tried to understand what's going on.

3 And what's going on is the tremendous volume of
4 material that's been submitted and a lot of steps in the
5 process to make sure that the claim is reviewed correctly and
6 that everything is accurate. And that when people get their
7 notice letters, they have sufficient information to make sure
8 that the claimant knows what their status is and what they can
9 do next if they do not believe that the claim was correctly
10 adjudicated.

11 So I may have given a lot more numbers and technical
12 information than is normal. But again, it's a pretty
13 significant process.

14 I also want to note -- and again, people are
15 obviously very concerned about this question. It's going to
16 take a few more months for all of these steps to be completed.
17 The review, reconsideration, appeals process. And as the
18 Court knows, there is also an appeal pending in the Sixth
19 Circuit.

20 So that is all a way of saying that it's unlikely
21 that money would be distributed in 2022. And I know that's a
22 disappointment to everybody. But hopefully some things will
23 start moving quickly and we'll be able to get to that stage in
24 the process in the very near future.

25 THE COURT: No. Thank you, very much, for that

September 14, 2022

13

1 report. And I think the detail is important. And it's
2 helpful to me to understand the volume of documentation that's
3 being submitted and the number of people going through all of
4 this.

5 And as Deborah just indicated, there's an appeal of
6 the entire settlement pending in the Sixth Circuit. And as I
7 understand it, there's not a briefing schedule yet. So I'd be
8 surprised if the case is fully briefed by the end of 2022.
9 But I'm not in charge there and maybe things will speed up in
10 the near future.

11 I want to add something to what Deborah just said,
12 which is that I read an Op-Ed, so just an opinion piece in the
13 Detroit News dated August 31 of 2022, that had three items in
14 it that I think need clarification in the event that
15 individuals in Flint or anywhere read that Op-Ed and might be
16 confused.

17 First, the article said that there's a previous judge
18 overseeing the case, Judith E. Levy. Well, she is still the
19 judge on the case whether people like it or not. So there's
20 no previous judge on the case.

21 The other thing is that this article indicated that
22 plaintiffs' counsel has already collected 200 million in
23 attorney fees, which of course is incorrect. And I think that
24 could be very misleading to people to think that that had
25 happened before a penny has been paid to individuals who filed

September 14, 2022

14

1 claims.

2 And the amount would not be -- I don't know where
3 they got the 200 million. I think this might have been a
4 guess or made up or an idea. I don't know what it was. But
5 it did make it into the Op-Ed.

6 And the third is that the opinion piece indicated
7 that claimants in Flint had collected \$4,500 each from the
8 settlement. And of course that's not true based on what
9 Deborah just said. And I don't know where that number came
10 from. And like the \$200 million number may have also just
11 been a guess or an idea, a thought, something that occurred to
12 the author that made it into their piece.

13 So I think it's important to try to get the actual
14 facts made available to everyone.

15 So what I'd like to do is ask you, Deborah, if
16 following this status conference in the next day or so you
17 could write some clarification for the Archer. Archer is the
18 entity that's processing all of these claims and will be
19 working from here on out on the claims process.

20 And so if individuals are contacting Archer saying
21 "Where's my \$4,500," or whatever it is, if you could notify
22 Archer with some sort of statement about that correcting the
23 information that made it into the August 31 Detroit News Op-Ed
24 I would appreciate that.

25 MS. GREENSPAN: Of course, Your Honor. Thank you.

1 THE COURT: Okay. Another thing I wanted to say
2 related to the settlement is since our last status conference
3 together, Judge Joseph Farah who was -- who is on the Genesee
4 County Sixth Circuit has announced his departure from that
5 court for a variety of complicated reasons, as I understand
6 it.

7 And I want to assure those of you who are working on
8 the settlement, which has important activity in the Genesee
9 County Circuit Court, that I've been in communication with the
10 state court administrative office, the State Court
11 Administrator Tom Boyd, and the current Chief Justice Bridget
12 McCormack to make sure we get someone appointed to cover these
13 issues that we need covered, which is really twofold.

14 It's the settlement issues where that person would
15 serve as a probate judge and the continuing litigation that's
16 pending in the state court.

17 So they're making good progress. They will have an
18 announcement I think by the end of the month about the
19 progress they're making. So that litigation will just be on
20 -- or that portion of the settlement and the litigation I
21 think sort of informally stayed until the end of this month.

22 So the next thing I wanted to cover is I see that we
23 have Mr. Williams and Mr. Rey I think I saw a moment ago from
24 the EPA, from the Department of Justice representing the
25 United States EPA.

September 14, 2022

16

1 MR. WILLIAMS: Yes, Your Honor. Good afternoon.

2 THE COURT: Good afternoon. I apologize to you and
3 to the plaintiffs on that case for the length of time it took
4 me to address your motion for interlocutory appeal. I think
5 as you know there was -- there were other things going on in
6 our case that just made it nearly impossible to turn to that.

7 So finally that did get done. I'm thrilled that I
8 was able to get that done. And of course the motion was
9 denied, as you know.

10 And in docket entry the 2179 on the main docket of
11 our case, the EPA had asked for 30 days after my decision on
12 the interlocutory appeal to submit a proposed schedule. I
13 would calculate that as Friday, October 7.

14 Is that what you have, Mr. Williams?

15 MR. WILLIAMS: It is. I think I was looking at it
16 was ECF 862 that might have been on the Walters' docket. But
17 that is the same date. October 7 would be 30 days. And we
18 plan to meet and confer also with Mr. Stern to discuss the
19 FTCA cases.

20 THE COURT: Exactly.

21 MR. WILLIAMS: But we are on the same page on the
22 timing. On this comment, there's no apology necessary on the
23 timing. We understand what transpired on the docket.

24 THE COURT: Okay. Thank you. So well, thank you.

25 I think we may have entered it on both dockets. I'm

1 not sure. Because we often have important events appear on
2 the 16-10444 docket so that everyone is aware of what's going
3 on.

4 The other thing that was in that entry -- I have it
5 as 2179 -- was that you would be picking eight plaintiffs.
6 Oh, this is for the Bellwether III. I'm sorry.

7 I guess while I was searching around for what we were
8 doing with the EPA and how that schedule would be arrived at,
9 I recalled that I had ordered that for the Bellwether III
10 group, there would be eight plaintiffs selected.

11 So I just ask counsel on that part of the litigation
12 to come up with a process. And you can follow exactly what we
13 did for Bellwether I to identify those eight plaintiffs and
14 report back as to how that's going. So there's -- I don't
15 need a deadline for that at this point unless somebody thinks
16 it would be helpful. Or if you've done it already, please let
17 me know.

18 MR. CAMPBELL: Your Honor, this is James Campbell --

19 MR. WILLIAMS: Your Honor, we certainly have not or
20 --

21 THE COURT: Yeah, I'm aware you --

22 MR. WILLIAMS: I'm sorry. I didn't mean to --

23 THE COURT: No, no. You're fine. Because I started
24 out focused on the EPA. I'm aware you have it for the EPA.

25 MR. WILLIAMS: I'm sorry. I just wanted to mention

1 one quick thing. I think it's closely related, Your Honor.
2 Just so we're on the same page you're on, the deadlines. One
3 thing I did have on my agenda for today was to confirm the
4 date by when the United States would answer the Meeks
5 complaint.

6 THE COURT: Yes.

7 MR. WILLIAMS: Which was the operative complaint.
8 And I would suggest that we also use that same October 7
9 deadline by that date. Certainly the United States could
10 answer that complaint.

11 I'm sorry if I changed topics. I was thinking about
12 those dates.

13 THE COURT: No. I had written down answer, question
14 mark. And I assumed you'd be following the rule. So October
15 7 is an excellent date. I think we really need to get that
16 litigation going in light of how long it has been pending and
17 how long it is since the events giving rise to it. And I take
18 responsibility for that.

19 So I'm happy to hear that October 7 is a deadline you
20 can meet for filing the answer as well as a proposed agreed
21 upon schedule.

22 MR. CAMPBELL: Your Honor?

23 THE COURT: Yes.

24 MR. WILLIAMS: I would just add, if I may, Your
25 Honor, one I think closely related idea. I think it's worth

September 14, 2022

19

1 raising today before maybe you move on from the United States.

2 It is the case that we are proceeding with FTCA
3 bellwether plaintiffs before Judge Parker. Fact discovery for
4 14 bellwether plaintiffs will be completed in December of
5 2022. Dispositive motions, just to pick two deadlines, will
6 be filed by July of 2023.

7 So I understand that the Meeks motion was pending for
8 some time. But just so Your Honor knows, with looking at the
9 larger Flint related docket, that -- those federal FTCA
10 bellwether plaintiffs are moving along before Judge Parker
11 under a detailed agreed upon schedule.

12 THE COURT: Good. Thank you.

13 MR. CAMPBELL: Your Honor, this is James Campbell.

14 THE COURT: Hi, Mr. Campbell.

15 MR. CAMPBELL: Hello. With regard to Bellwether III,
16 we have a group of 10 that are in the pool. So we need to
17 essentially deselect two of the 10 to get to the 8. And we
18 have not discussed that with Mr. Stern or Mr. Shkolnik as of
19 yet. But certainly something that we can do readily.

20 THE COURT: Okay.

21 MR. CAMPBELL: I just wanted to -- Bellwether III.

22 THE COURT: Good. Thank you. The next issue that I
23 have is that Ms. Devine on behalf of VNA submitted an issue
24 that was a little bit unclear to me what it is, but it has
25 something to do with class plaintiffs' witnesses. Something

1 to do with discovery on the class case.

2 MR. CAMPBELL: Yes, Your Honor. This is, again,
3 James Campbell. The issue that we asked be put on the docket
4 is this. We had identified four fact witnesses that relate to
5 the class representatives. People -- I can go through them
6 with more particularity. But the bottom line is that these
7 are four fact witnesses that relate to the class
8 representatives having to do with where they live or plumbing
9 issues or other issues that came up in the depositions that we
10 took of the class representatives during the certification
11 phase.

12 And I think the issue is this, Your Honor, that there
13 seems -- there is some uncertainty that I think we all have
14 about the agreed to -- you know, what exactly is the line for
15 the class case regarding I guess I would say specific
16 causation type issues or individual issues or just in general.

17 THE COURT: Oh, okay.

18 MR. CAMPBELL: So and I think that -- I think all
19 sides are really not clear on that. So what I would suggest
20 on this is that we -- you know, we've identified these. If at
21 some point if the class case were to be tried and the class
22 were to prevail, then at some point in the future of the
23 individualized cases that might follow, these would be
24 relevant.

25 They may or may not be admissible in this class case

1 depending upon -- on the issues class case depending upon what
2 is or isn't an individualized issue. So that's the basis of
3 it. And I'm happy to go into some more detail.

4 But I think that what we need is perhaps some
5 guidance about what the class case would be. And I don't
6 think this is the appropriate forum. It might be that we set
7 something up in the near future to discuss that.

8 THE COURT: Okay. Let me say this. I got out the
9 class notice just trying to sort of reorient my thought
10 process to the class case as well as the individual bellwether
11 process.

12 At the time of class certification I had certified
13 nine issues. And looking at those, I'm not entirely sure
14 about issue 1 right now. I think in some ways I've already
15 decided issue 1 in the Lee case. And I don't know that it is
16 appropriate for a jury trial. And there may be other issues
17 that could be sort of articulated a little more concisely or
18 combined even.

19 So I was going to suggest, not knowing what this
20 issue was, but that we do some kind of joint work together to
21 make sure we've got the correct issues that make sense in
22 light of the development of the litigation.

23 But setting that aside, in terms of the discovery
24 that from my perspective is appropriate now, it would not be
25 individualized damages discovery of did somebody have -- you

1 mentioned plumbing. Like did -- what were their service lines
2 or did they have a hot water heater that was damaged or dish
3 washer or something like that. It would be the discovery when
4 I look at the schedule which talks -- I think the schedule
5 says merits discovery.

6 The merits that I'm talking about are the issues, the
7 merits of the pending trial and not the subsequent process,
8 whatever it may be. Individual trials or a claims process if
9 there's a plaintiffs verdict.

10 So I don't want to see the parties spending their
11 time on individualized causation and individualized damages
12 when the issue here in number 6 is were the corrosive water
13 conditions allegedly caused by defendants capable of causing
14 harm to Flint residents, property, and businesses. I don't
15 think you need to talk to the named plaintiffs and get their
16 medical records to see if it happened to them. Because the
17 question is just whether it's capable of causing harm.

18 Does that help, Mr. Campbell?

19 MR. CAMPBELL: It does help, Your Honor. But just
20 taking it further. What we want to avoid, Your Honor, is
21 this. You know, we've identified this discovery. We could
22 articulate how it -- the issues to be developed. And I can --
23 they are factual issues that would be relevant to these
24 claims. Now whether or not it actually ends up in the trial
25 of these issue classes, that's where we -- I have some

1 confusion.

2 I did the same thing with the nine issues. I read
3 them and had some questions about them.

4 THE COURT: I do, too.

5 MR. CAMPBELL: So what I want to avoid is this. I
6 don't want to get in a situation -- I don't think anyone wants
7 to be in a situation where we come up to the trial and there
8 are witnesses being called and there's a dispute about whether
9 or not that belongs in the trial or not. We need to have some
10 -- I'm hoping to have some definition of -- some precise
11 definition of that beforehand.

12 So if we do need to take the discovery, we can do
13 that. If it's not going to be part of the trial, then we
14 don't have to worry about it. And nobody wants to spend time
15 --

16 THE COURT: My perspective, what I think you've
17 described very broadly -- I know there's a lot more detail,
18 I'm sure. But from what you've described very broadly, it
19 does not sound to me that that is going to be a part of this
20 trial. And you would not be foreclosed from taking that
21 discovery at a later date if there is a plaintiffs' verdict.

22 But Mr. Leopold, who's --

23 MR. LEOPOLD: If I can just weigh in just for a
24 second on this issue and I appreciate Your Honor raising this
25 issue. Because as Mr. Campbell has discussed, we've all sort

1 of been digesting the various issues that will be presented at
2 the time of trial.

3 Although clear to us, there are -- as Your Honor
4 began, there may be some legal issues that the Court will need
5 to decide, you know, number one, maybe, number two and things
6 of that sort.

7 But what I think would be of great help to the
8 parties is that the issue that is on the table now about
9 potential discovery that VNA wants to do is that before
10 anything gets done, to do as Your Honor suggested, it may be
11 having a half hour call with just the class counsel and
12 defense counsel and to address these particular issues in a
13 little bit greater detail so that we all have a understanding
14 mutually together on what the playing field is going to be for
15 the start of our trial. Because I think that would be very
16 helpful.

17 And I say that because not only will it give us a
18 game plan and guidance on the trial and the issues to be
19 tried, but also, Your Honor, just to put on the table, we're
20 going to be requesting that the Court institute time limits on
21 the parties for this class trial because it's an issue only
22 trial. We want to try to be as specific as we can.

23 So I think having that conference with Your Honor
24 would be quite helpful to all the parties.

25 THE COURT: And thank you. I think Mr. Novak was

1 also trying to speak?

2 MR. NOVAK: Yes. Thank you, Your Honor.

3 I think the guidance that you have already provided,
4 maybe if we go back and discuss this a little more with
5 Mr. Campbell and Ms. Devine will satisfy the parties that
6 these four depositions don't need to be taken.

7 I have an immediate timing concern. There's
8 burdensome issues associated. We're talking the approximately
9 85-year-old mother of class representative Rhonda Kelso.
10 She's in poor health. I really don't see the relevancy of her
11 deposition. Even if we were in that subsequent phase of the
12 proceedings.

13 But and I don't want to go through -- these are all
14 family relatives of class members that we're talking.

15 THE COURT: Okay.

16 MR. NOVAK: We don't intend to call any of these
17 witnesses at the issues trial. And maybe we can discuss it
18 more between counsel. But what I don't want to have happen is
19 a situation where there's still some insistence on their part
20 that, for instance, Ms. Chisholm, an 85-year-old woman, or one
21 of the other members, family members of the class
22 representatives who also has some health issues.

23 I'd really like to avoid -- cause right now we've got
24 dates late September, early October where if we -- if we don't
25 come to an understanding that these depositions can be tabled

1 for now, that we at least have an opportunity to come back and
2 discuss those burden and other issues with the Court.

3 THE COURT: Okay.

4 MR. CAMPBELL: And Your Honor?

5 THE COURT: Yeah. Go ahead, Mr. Campbell.

6 MR. CAMPBELL: I interrupted you.

7 I was just going to say that with regard to those
8 issues, these were all noticed remotely by Zoom and to
9 accommodate the witnesses as much as possible. But I think I
10 agree with both Mr. Leopold and Mr. Novak that, you know, if
11 we had some time with Your Honor to focus the issues and
12 understand exactly what is in play and isn't, that would be
13 extremely helpful.

14 THE COURT: What if we do this. I think -- I mean,
15 I'm looking at issues 1 through 9. I can't interestingly
16 imagine that you need any of the actual plaintiffs or their
17 family members or distant relatives or anything or near in
18 relatives to testify. But of course I'm not counsel on the
19 case.

20 What if you meet and confer knowing that when the
21 schedule itself says completion of merits discovery, it
22 doesn't mean discovery related to the actual initial
23 complaint, which included damages, but it means discovery of
24 the nine issues. And meet and confer and let me know by this
25 Friday. I mean, you can talk this afternoon if there's a

September 14, 2022

27

1 moment whether the issue is resolved.

2 If it's not, you can send a joint email and we'll set
3 up a discovery dispute resolution process for it.

4 MR. CAMPBELL: That's great, judge.

5 MR. LEOPOLD: I think that would work, Your Honor,
6 for us to have that time together to address these. I think
7 between the parties, we hopefully can at least get on the same
8 page and then apprise the Court where we all are at or what
9 and how the issue class trial would proceed.

10 THE COURT: And I'm not yet at the point of sort of
11 scheduling the exact, you know, 8:30 to 2:00 with this, with
12 that. I'm not quite at that point yet. I will be soon. But
13 I am interested in taking a look at the issues.

14 I have learned a great deal since issuing that
15 decision. I've made the Lee decision, the summary judgment
16 decisions in Bellwether I that I think address issue 1 and
17 potentially others as legal issues that are not for a jury to
18 decide.

19 I would be very interested in talking with all of you
20 -- well, those of you on this case -- about whether we need to
21 condense or collapse some of these issues and/or eliminate
22 potentially number 1.

23 MR. CAMPBELL: Your Honor, I think that's -- I was
24 going to suggest that. I think Mr. Leopold agrees --

25 THE COURT: Good.

September 14, 2022

28

1 MR. CAMPBELL: -- that that would be very helpful.

2 THE COURT: How should we do that? We can --

3 MR. LEOPOLD: Can I suggest, Your Honor,
4 Mr. Campbell, myself, and respective represents from both
5 sides and Mr. Mason get on a call. Today is Wednesday. If we
6 can have maybe until early next week. Because I'm not sure
7 what everybody's schedules are like between now and the end of
8 business Friday.

9 THE COURT: Sure.

10 MR. LEOPOLD: Maybe by Tuesday we'll get back to the
11 Court.

12 THE COURT: Yeah. I would be available 2:00 PM on
13 Wednesday the 28th I think, unless Bill tells me I'm not
14 available then, to have a conference to discuss this.

15 MR. LEOPOLD: Assuming, Your Honor, we -- the parties
16 at the end of the conversation have a general understanding
17 and agreement of the issues and/or consolidating some of the
18 issues, how would Your Honor like us to apprise you? By an
19 email saying what we concluded or --

20 THE COURT: How about a proposed stipulation as to
21 what the issues should be?

22 MR. LEOPOLD: Thank you, Your Honor.

23 THE COURT: If we can -- if you can do that, and then
24 I'll take a look at it.

25 MR. CAMPBELL: Very good. Thank you, Your Honor.

September 14, 2022

29

1 THE COURT: Okay. Thank you. I'm glad this issue
2 came up. Because it was percolating on my mind but I hadn't
3 looked back at the issues in quite a while.

4 MR. NOVAK: Your Honor, if I may interject just one
5 brief issue?

6 THE COURT: Yes.

7 MR. NOVAK: In addition to the depositions that were
8 at issue, there was also some requested home inspections that
9 Veolia had requested. I'm not going to discuss those issues
10 substantively now. I only would request that we have the same
11 understanding that we will make that also part of the meet and
12 confer in addition to these four depositions and report back
13 to the Court for either some type of resolution process or
14 simply report back that the issue is resolved. But on the --

15 MR. CAMPBELL: That's --

16 MR. NOVAK: -- as the other one.

17 MR. CAMPBELL: Excuse me, Paul. That would be fine,
18 Your Honor.

19 I was going to -- I know that class counsel had
20 raised this issue. But it wasn't something that we intended
21 to address today necessarily. But we can certainly -- we will
22 do as you suggested. And I think it will all go to this
23 notion of describing the case that we have.

24 THE COURT: Right.

25 MR. STERN: May I ask --

1 THE COURT: Just it occurs to me that home
2 inspections don't seem relevant to the issues as they are.
3 But Mr. Stern, was that you?

4 MR. STERN: I wasn't -- sorry, Your Honor. I wasn't
5 sure if Mr. Novak was referring to home inspections or the
6 inspection of the treatment plant that there was an issue that
7 arose. So if there's going to be a meet and confer about the
8 treatment plant issue, there's other parties besides class
9 plaintiffs who --

10 MR. LEOPOLD: It's different, Mr. Stern. These were
11 individual homes that VNA has requested to potentially
12 inspect. That's what we're referring to. But there is the
13 question I think its up for today, I may be incorrect, about
14 inspection of the water treatment facility.

15 MR. CAMPBELL: Your Honor, if we could just step back
16 up to the home inspections and your comments about that
17 doesn't seem -- it doesn't seem like something we should be
18 doing.

19 THE COURT: Yeah.

20 MR. CAMPBELL: We just got a supplementation this
21 week from class counsel about, you know, just supplementing
22 discovery. And in it, it appears that there was material
23 taken from at least one house, maybe another house, but some
24 pipes or perhaps some fixtures or material taken out of the
25 house that would seem to relate to expert issues and the like.

1 So we need to study what that is, how it affects, you
2 know, expert issues, and how it affects the class case. So we
3 need to get a feel for or an understanding of what this is.

4 THE COURT: Okay. Yes. Certainly if it relates to
5 an expert's testimony, that's a different thing. And if the
6 expert is relevant to the case, that would change the
7 calculation and it would seem that the home inspection might
8 be sensible if that's what the expert did to prepare their
9 report.

10 So Mr. Campbell and Mr. Novak and Mr. Leopold, will
11 you add these home inspections to your meet and confer and
12 just explain your experts, if they -- okay.

13 MR. NOVAK: We can do that. I'll reserve comment on
14 the pipes for after we've had the meet and confer.

15 THE COURT: Okay. And let me also say that in
16 anticipation of my absence for a period of time, I had
17 expanded Deborah Greenspan's responsibilities or I don't know
18 that I'd -- I clarified that I want -- was seeking her help
19 with discovery disputes. And I'm back. And so I'm happy to
20 handle them.

21 If it gets to a point where we've got three cases
22 progressing to trial and it's just not possible to keep up
23 with all of them, I will once again turn to Ms. Greenspan for
24 her help, which is always very, very helpful to me.

25 So the other thing is, okay, I got a late request

September 14, 2022

32

1 from Mr. Leopold who did not acknowledge that it was two days
2 late. I had set a deadline. And I set deadlines for a
3 purpose, which is that allows all of you -- there are 61
4 people as panelists and 35 attending.

5 It allows people to prepare, to make decisions about
6 the use of their time, whether this is a hearing to attend or
7 not attend and so on. But without explaining why he submitted
8 this late, Mr. Leopold asked me to add to this conference,
9 quote, "VNA's unilateral notice to inspect the Flint Water
10 Treatment Plant."

11 So I have now learned that the potential date for the
12 inspection is September 22 and so on. And so it does seem
13 like this is an issue we should deal with because I don't
14 anticipate having a conference before September 22.

15 But Mr. Leopold, if I could ask you to follow the
16 deadlines in the future. And if you can't, let me know that
17 you're not doing it and that there's a reason.

18 MR. LEOPOLD: I apologize, Your Honor. I should have
19 put in the reason that notice of the inspection came quite
20 late. And I knew we had this hearing. We would not have the
21 opportunity to have it heard beforehand. But I apologize and
22 will do so next time.

23 THE COURT: Okay. So I don't know anything about why
24 the unilateral notice -- tell me what the issue is,
25 Mr. Leopold.

1 MR. CAMPBELL: Your Honor, if I may? What we did is
2 following the bellwether trial where there was kind of
3 disparate pictures of this and that of the plant, we filed a
4 Rule 34, pursuant to the rules, notice of the inspection of
5 property.

6 And consistent with the way that we've had handled
7 everything and consistent with the Case Management Order, we
8 suggested that the date identified in the notice was subject
9 to change and discussion. And certainly what we did was we
10 asked Mr. Berg on behalf of the City of Flint if there was an
11 objection to us doing that. He said no. He asked that we
12 proceed formally. So we did that.

13 And whoever wants to attend is -- you know, there's
14 no issue. We even -- we attached I think a Schedule A or
15 Exhibit A to the notice. And it's just a visual walk through.
16 We anticipate -- you know, we estimated three hours. Take
17 pictures, video. No sound recording. No interviews of
18 anybody. But just to look at the plant as it currently
19 exists.

20 You know, clearly and obviously it's after the
21 issues. But the plant's still there and there may be some
22 changes. There may be things that aren't changed. But that's
23 the reason is to just do a walk through, take pictures, take a
24 video. And whoever wants to participate, we can do it at a
25 mutually convenient day and time. And that's the issue.

1 MR. LEOPOLD: If I may, Your Honor, just briefly
2 respond to that issue?

3 And I realize what Mr. Campbell wants to do. But my
4 first reaction when I heard all of this is, first, in what
5 case or cases is this now going to be used? Is this just for
6 the bellwether case? Is it for the class case?

7 Also, once we start doing this, I'm assuming this is
8 being done for use of expert testimony for the most part.
9 Then we're going to get into, well, if his experts are going
10 to be there, do we have other party's experts now need to be
11 there. Then we get into potentially supplemental reports on
12 some issues and then more depositions on other issues. This
13 is just a revolving never ending round of discovery.

14 Mr. Campbell's right, this is post the incident, many
15 years now post the incident. Why -- anything they film now or
16 photograph now would have no real relevance to what the
17 facility was, you know, several years ago. Whether it's
18 changed or not. They already have pictures that evidently
19 they used in the other trial. If they want better pictures,
20 they should have done that, I guess, a while ago.

21 THE COURT: I'm not sure about that. Somebody will
22 have to file a motion in limine saying a video taken in
23 September of 2022 would not be relevant and then we'll deal
24 with that. The taking of the video is all we're dealing with
25 now.

1 I do -- I would note that last month I read an
2 article in the newspaper. We know I just discussed how
3 sometimes that's not fact checked. But it did indicate that
4 \$180 million in upgrades had been done to the plant. I just
5 put that out there, Mr. Campbell. \$180 million in upgrades to
6 the Flint Water Treatment Plant in a recent period of time.

7 But that's all an issue for whatever trial
8 Mr. Campbell wants to bring this into. What I'm trying to
9 figure out is your concern that this was unilateral notice.
10 We now know that if you want to be there or ask Mr. Campbell
11 to do it some other time so that you can.

12 Mr. Campbell, is this for an expert's report?

13 MR. CAMPBELL: Your Honor, it's simply discovery at
14 this point. There was -- I think the people involved in the
15 criminal cases did it maybe even during COVID. And you know
16 the whole COVID restrictions, you know, put limits on what we
17 could do during that timeframe and gathering in public and all
18 of that.

19 So it is, in the first instance, to do a walk through
20 and to see what we can see. And if there's something
21 relevant, we'll do it. In terms of the expert issues,
22 particularly on the class since Mr. Leopold raised it, you
23 know, there is expert disclosure on the merits or for this
24 issues class.

25 The plaintiffs, to the extent there's something new

1 it comes up, I think it's October 14, and then there's a
2 deposition period. And then there's a period for the
3 defendants to identify experts and depositions. So that issue
4 is covered in the CMO. And I guess I don't understand it.

5 But the purpose of it is, as you said, Judge, to look
6 at it, to take pictures, take a video. And if anybody wants
7 to participate, that's fine or great.

8 THE COURT: And Mr. Stern, you had said earlier you
9 had some issue to raise here as well.

10 MR. STERN: I don't have an issue, Your Honor. I
11 just wanted to note that if there was going to be a meet and
12 confer about the inspection when y'all were discussing the
13 class meet and confer on various class issues, if what was
14 being described as part of that was a discussion about this.

15 There are other parties who responded to
16 Mr. Campbell's notice indicating that they'd both like attend
17 and like to participate in any discussions including the
18 McLaren plaintiffs. I believe it was Donald Dawson who said
19 he'd like to participate. I'm sure that the state would want
20 to participate. And perhaps Ms. Smith. You know, whomever.
21 And so that was why I raised it.

22 But I don't have anything to add substantively to
23 what's already been discussed.

24 THE COURT: Okay. So Mr. Leopold, I'm not sure I'm
25 entirely clear on your objection. Because there is the --

1 your motions in limine, there's -- do not need to be filed
2 until August 14 of 2023.

3 So if Campbell goes in there and Devine goes in there
4 and they shoot a video and put it on their exhibit list and
5 you want to say, look, \$180 million -- this represents \$180
6 million worth of change, then that's for you to file, for
7 sure, if that's your position.

8 But is your -- so are you -- I'm not here today to
9 deal with the admissibility of such a video that they might
10 shoot.

11 MR. LEOPOLD: No, Your Honor. I candidly didn't know
12 that there's been \$180 million invested to upgrade the
13 facility due to the damage that had been done. Certainly we
14 may really want to use that video ourselves if that's the case
15 and let the jury understand that due to the damages that
16 occurred, there's been that much money put into the facility.

17 But that being said, we have, I guess, more
18 clarification now. I'm just a little fearful -- and I guess
19 this meet and confer about the issues will be helpful -- a
20 little fearful about just broad brushed sort of reopening all
21 discovery for the next year doing more and more discovery.
22 And that is a little bit of concern I think for all the
23 parties. At least on the plaintiffs' side, both bellwether
24 and class. But --

25 THE COURT: Well, here's what I would suggest. Take

1 a look at ECF 2195. That sets the schedule in this -- in the
2 class trial. And it sets the completion of remaining merits
3 discovery, meaning on the issues at October 4 of 2022.

4 So Mr. Campbell noticed this before that date and
5 then -- I mean, let's say you have a meet and confer and you
6 actually shoot the video on Halloween, that's okay if it's
7 agreed upon.

8 MR. LEOPOLD: Right. Not a problem.

9 THE COURT: Okay.

10 MR. LEOPOLD: But again, it goes -- which will be
11 clarified when we have our meet and confer as well about --

12 THE COURT: Goes to what?

13 MR. LEOPOLD: What may be relevant and not relevant
14 for moving forward.

15 THE COURT: Yeah. But now -- I mean, you don't have
16 to argue the relevance until August of the 2023.

17 MR. LEOPOLD: I understand that, Your Honor. That's
18 when we're going to have the trial. What I'm referencing is
19 the parties may get a better feel by talking to one another
20 what is actually will be needed and not needed for purposes to
21 have trial.

22 THE COURT: There you go. That's very true. Okay.
23 All right.

24 So is there anything else at this time? Because I
25 had a follow up meeting with Bellwether I counsel that I

September 14, 2022

39

1 wanted to have. And we'll do that separately. But anything
2 else?

3 MR. CAMPBELL: Nothing from us, Your Honor. Thank
4 you, so much.

5 THE COURT: Okay. All right. Good to see everybody.
6 And take care.

7 (Proceedings Concluded)

8 - - -

9

10 CERTIFICATE OF OFFICIAL COURT REPORTER

11 I, Jeseca C. Eddington, Federal Official Court
12 Reporter, do hereby certify the foregoing 39 pages are a true
13 and correct transcript of the above entitled proceedings.

14 /s/ JESECA C. EDDINGTON
15 Jeseca C. Eddington, RDR, RMR, CRR, FCRR

09/21/2022
Date

16

17

18

19

20

21

22

23

24

25